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ABSTRACT

This digest reviews earlier court decisions which led up to the Supreme Court's 1988 "Hazelwood School District v. Kuhlmeier" decision and also discusses the "Hazelwood" case's implications for freedom of student expression. The digest cites various documents in the ERIC database which deal with student journalism, censorship, and legal rights and responsibilities. (NKA)

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The Supreme Court on *Hazelwood*

A reversal on regulation of student expression

by Thomas Eveslage

Both judges and school officials have been thinking about and dealing with the nature of students' rights to free speech through the 1970s and 1980s, since *Tinker v. Des Moines Independent School Dist.*, the 1969 landmark U.S. Supreme Court decision that acknowledged student rights. Stating that students do not "shed their constitutional rights...at the schoolhouse gate" (393 U.S. at 506), the Court upheld the right of three Des Moines high school students to wear black armbands as a peaceful symbol of opposition to the Vietnam war.

Tinker effectively brought the rights of students and those of other citizens closer together and placed on public school officials who deny students' rights burdens similar to those imposed on other government officials. The Court's ruling and reasoning subsequently were applied to student expression other than the wearing of armbands, from theater productions to art shows, from school assemblies to student publications.

Freedom of the student press was faithfully chronicled as it unfolded in the 1970s. The Supreme Court, balancing students' constitutional freedoms and administrators' traditional responsibilities, said in *Tinker* that school officials could not stop expression simply because they disliked it. Robert Trager's seminal work, *Student Press Rights* (1974), shows how lower courts built on this foundation.

The philosophy and reasoning of earlier court decisions were refined but not revised in decisions into the 1980s. Trager (1976) reported that the courts repeatedly overruled administrative efforts to use unconstitutionally vague regulations to censor student publications. Ingelhart (1986) identified 25 cases heard in federal court between 1969 and 1984 involving high school journalists. An overwhelming majority favored the students.

Despite such court support and increasing public awareness, the student press was far from free. *Captive Voices* (Nelson, 1974) characterized it as heavily self-censored, and Kristof (1983) noted that more than 80 percent of student editors surveyed in 1981 reported overt or self-censorship.

Meanwhile, the mood was shifting. As early as 1981, Overbeck observed that "it seems likely that the pendulum will continue to swing away from student freedom and toward administrative authority....[T]he courts seem prepared to give school officials an increasingly free hand to control the content of student publications." (p. 18) In 1987, a record 623 requests for legal advice flooded the Student Press Law Center in Washington, D.C.

The Court changes direction

Student journalists' efforts to gain press freedom experienced a major setback on January 13, 1988, when the U.S. Supreme Court ruled in *Hazelwood School Dist. v. Kuhlmeier* that school administrators could censor a school-sponsored newspaper. Just as *Tinker* had started an era of expanded student rights, so *Hazelwood* signals a departure that could lead toward more restriction of students' expression.

Day and Butler (1988) believe that the Supreme Court's *Hazelwood* ruling appropriately balances student journalists' constitutional rights and the pedagogical mission of public schools. Referring to education's historic role of "cultural transmission," they argue that school administrators must have the power to regulate behavior and preserve traditional rules and values. Furthermore, they believe that,

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"[s]ince the school is the 'publisher' of the paper, the principal must exercise some content control.

The Hazelwood principal believed that the stories he censored—accounts of unnamed, pregnant students and a report on the impact of parental divorce on students—were unfair and inappropriate for teenagers. He was concerned that the "anon-ymous" students could be identified, that the school would appear to be condoning teenage pregnancy, and that divorced parents criticized should be consulted prior to publication.

How surprising was the reversal?

The Supreme Court did foreshadow its 1988 *Hazelwood* ruling. In 1985 it gave school officials broad discretion to search students and their belongings (*New Jersey v. T.L.O*), and the next year it upheld the suspension of a student whose speech before a school assembly was considered inappropriately vulgar (*Bethel v. Fraser*). Neither case focused on student rights; both stressed administrators' rights.

But the same July day that the Supreme Court decided *Bethel*, the 8th Circuit Court of Appeals ruled in *Hazelwood* (prior to its reaching the Supreme Court) that the principal unconstitutionally censored the stories written by Journalism II students for the newspaper. The circuit court's ruling was pre- dictable and consistent with precedent. It cited two free speech safeguards which also are highlighted in a Student Press Law Center book (1985) assessing the then-current parameters of student press rights: 1) Publications that operate as forums for student expression cannot be censored merely because of dissatisfaction with the message; and 2) Censorship based on substantial disruption of the educational process requires evidence of such disruption.

The Supreme Court surprised many when it agreed to hear the *Hazelwood* case. It had ignored its "substantial disruption" standard one year earlier in *Bethel* and had never ruled on the question of student newspapers as public forums. Many hoped that the *Hazelwood* decision would clarify those matters and resolve questions about fiscal and legal liability and the distinction between class-related and extra-curricular expression.

The real surprise came on January 13. Mark Goodman, Director of the Student Press Law Center, called the *Hazelwood* decision a "dramatic contrast to the decision of courts across the country over the last 15 years." (1988) Most important, from a legal perspective, is the virtual abandonment of *Tinker* and its progeny. After *Hazelwood*, students retain First Amendment rights in the schools, but the *Tinker* standard (especially the "substantial disruption" justification) applies only to *non*-school-sponsored speech—"personal expression that happens to occur on the school premises." Most other student expression is subject to a new standard the Court fashioned with sweeping language and broad implications (Eveslage, 1988).

Instead of ruling narrowly on student newspapers, the Court in *Hazelwood* gave discretion to school officials to:

1. Serve as publisher. (The Court equated publisher with editor-in-chief, but ignored the implied fiscal and legal liability that comes when one exercises such control.)

2. Censor, if there is a "reasonable" educational justification, any expression that does not properly reflect the school's educational mission. The Court called it reasonable to censor a newspaper story that school officials believe is not "fair," expression that deals with "sensitive topics," and content that is "ungrammatical, poorly written, inadequately researched, biased or prejudiced, vulgar or profane, or unsuitable for immature audi- ences."

3. Use this power to control expression through any school-sponsored activity. Legal distinctions between class-produced and extra-curricular publications disappeared. Theater production (Faaborg, 1985), art shows, debates and pep rallies are just some of the school-sponsored activities now under tighter control. However, underground publications produced without teacher assistance remain subject only to the *Tinker* standard.

4. Review student expression in advance, even when no guidelines define what will or will not be censored.

Most perplexing for student journalists is the Court's definition of public forum. It was not enough that the Hazelwood East newspaper, through its own policy and practice, was identified as a public forum. It is up to school officials to designate it as such. Upon doing so, school officials must apply the *Tinker* standard to any regulation of the newspaper's contents.

Some questions remain unanswered

Several questions remain after *Hazelwood*. Abrams and Goodman (1988) raise significant concerns regarding the public forum concept, the parameters of school sponsorship, and fiscal liability and authority. They persuasively conclude that *Hazelwood* does not apply to the college press, but the Supreme Court refused to dismiss that possibility. And what Adams (1983) called "the adviser's dilemma" remains a problem, as advisers face pressure to exert more control over publications.

Free speech proponents can only hope for legal relief. Future litigation may cause lower courts to limit

or refine the Supreme Court's broad language delineating student rights. Until then, student journalists can seek help by:

1. Using Justice Brennan's dissent in *Hazelwood* and other philosophical arguments for a free student press (Trager and Eveslage, 1985; Ingelhart, 1986; Student Press Law Center, 1985) to negotiate a supportive school policy;

2. Encouraging adoption of a journalism curriculum that stresses the importance of freedom of the press as well as the appointment of an adviser able to establish appropriate publication policies;

3. Finding support systems both within and outside the school (Student Press Law Center, 1985; Goodman,1988; Trager and Eveslage, 1985); and

4. Joining the efforts of school boards to establish new policies and of states to enact post-*Hazelwood* legislation—such as the Massachusetts law dated July 14, 1988, and a similar law in California, which protect students' free speech rights.

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